

REMARKS

Further and favorable reconsideration is respectfully requested in view of the foregoing amendments and following remarks.

Claims 1 and 3-10 are pending in this application.

Claim 1 is amended to recite that the metal-containing yeast comprises a metal selected from the group consisting of Mg, Zn, Fe, Cu, Co and Mn. Support for this amendment can be found in the paragraph bridging pages 7-8 of the specification.

Claims 1 and 3-10 are also amended to make minor editorial changes that are self-explanatory.

I. Claim For Foreign Priority

This application is a national stage application of international application No. PCT/JP2004/004319, filed March 26, 2004, and claims benefit to Japan Patent Application No. 2003-086141, filed March 26, 2003. A certified copy of the priority document is present in the Image File Wrapper for this application. Thus, Applicants respectfully request the Examiner to acknowledge the claim for foreign priority, and acknowledge that a certified copy of the priority application has been received, by checking the appropriate boxes in item 12 on the Office Action Summary page of the next Official Action.

II. Claim Rejection Under 35 U.S.C. § 103

The Examiner rejects claims 1 and 3-10 under 35 U.S.C. § 103(a) as being unpatentable over Nakashima et al. (U.S. 5,126,143) in view of Farmer (U.S. 6,461,607) and Greenberg (U.S. 5,260,279). As applied to the amended claims, Applicants respectfully traverse the rejection.

Claim 1 recites that the “metal-containing yeast comprises a metal selected from the group consisting of Mg, Zn, Fe, Cu, Co and Mn.”

The Examiner acknowledges that Nakashima et al. do not specifically teach the presence of a metal-containing yeast, but asserts that Greenberg teaches a feeding composition which may contain a metal-containing yeast. However, Greenberg teaches selenium yeast and chromium yeast, but does not teach or suggest that the “metal-containing yeast comprises a metal selected from the group consisting of Mg, Zn, Fe, Cu, Co and Mn,” as recited in amended claim 1.

Accordingly, the combination of references fails to teach or suggest each and every limitation of Applicants' amended claims. The rejection should be withdrawn for this reason alone.

Furthermore, Greenberg does not teach that the metal-containing yeast activates intestinal bacteria and "Bacillus coagulans." A person of ordinary skill in the art would not have expected the synergistic effect, such that Bacillus coagulans is activated by a **metal-containing yeast comprising a metal selected from the group consisting of Mg, Zn, Fe, Cu, Co and Mn**, from the combination of references relied upon by the Examiner. Therefore, one of ordinary skill in the art would have had no reasonable expectation of success in arriving at the claimed invention based on the teachings of Nakashima et al., Farmer and Greenberg.

Therefore, claim 1 would not have been obvious over the references.

Claims 3-10 depend directly or indirectly from claim 1, and thus also would not have been obvious over the references.

Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

III. Conclusion

For these reasons, Applicants take the position that the presently claimed invention is clearly patentable over the applied references.

Therefore, in view of the foregoing amendments and remarks, it is submitted that the rejection set forth by the Examiner has been overcome, and that the application is in condition for allowance. Such allowance is solicited.

Respectfully submitted,

Yasumi YUGARI et al.

By Andrew B.
Freistein/

Digitally signed by /Andrew B. Freistein/
DN: cn=/Andrew B. Freistein/, o=WLP,
ou=WLP, email=afreistein@wenderoth.
com, c=US
Date: 2009.09.08 17:06:56 -04'00'

Andrew B. Freistein
Registration No. 52.917
Attorney for Applicants

AES/ABF/ekb
Washington, D.C. 20005-1503
Telephone (202) 721-8200
Facsimile (202) 721-8250
September 8, 2009